

No. 83-289



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In The  
SUPREME COURT OF THE UNITED STATES  
October Term, 1983

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RAPIDES PARISH SCHOOL BOARD, et al,  
Petitioners

vs.

VIRGIE LEE VALLEY, et al  
Respondents

and

UNITED STATES OF AMERICA

————— o —————  
BRIEF IN OPPOSITION TO  
PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether the District Court's action in closing a racially identifiable school in Forest Hill and another racially identifiable school in Cheneyville, constitutes an abuse of its discretion in remedying the remaining vestiges of the previous dual school system?

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Virgie Lee Valley, et al, files its Brief in  
Opposition to the Petition for Writ of Certiorari  
of Rapides Parish School Board, et al and Clyde

Holloway, et al.

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#### OPINIONS BELOW

The opinion for the United States Court of Appeals for the Fifth Circuit of date, March 30, 1983 is reported at 702 F. 2d 1221. The opinion of the Fifth Circuit of May 18, 1981 is reported at 646 F. 2d 925. The preliminary Opinion of the District Court of June 6, 1980 is unreported. The opinion of the District Court of August 6, 1980 is reported at 499 F. Supp. 490. The District Court's opinion of July 22, 1981 on remand is unreported.

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#### JURISDICTION

The judgment of the Court of Appeals was entered on March 30, 1983 and is attached to the Petition in the Appendix at pp. 1A - 21A. An Order denying rehearing en banc as to the Forest Hill Intervenor was entered on April 29, 1983 and is attached to the Petition in the appendix at pp. 24A - 25A. An Order

denying rehearing en banc and rehearing as to the Rapides Parish School Board was entered on May 26, 1983 and is attached to the Petition in the Appendix at 26A. Jurisdiction of this court has been invoked by Petitioner under 28 U.S.C. § 1254(1).

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#### CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment and Petitioner further contends the Due Process Clause of the Fifth Amendment of the United States Constitution is also involved.

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#### STATEMENT OF THE CASE

The Respondents herein are Virgie Lee Valley and other black residents of the Parish of Rapides. This action was initiated by Respondents, as petitioners below, in the year 1965, and through out its duration there has been considerable litigation.<sup>1</sup>

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<sup>1</sup>Decisions by the United States Court of Appeals for the Fifth Circuit invalidating prior desegregation plans for Rapides Parish are reported at 417 F.2d 801 (1969), 422 F.2d 814 (1970), 423 F.2d 1132 (1970), and 434 F.2d 144 (1970). The history of this case is described in Valley and United States v. Rapides Parish School Board, 646 F.2d 925 (5th Cir. 1981).

The United States participated as plaintiff-intervenor from the inception of this action.

In 1979, plaintiffs filed a motion for supplemental relief and the United States renewed its request for supplemental relief under its 1974 motion. Upon hearing these motions, the District Court was of the opinion that the Rapides Parish School System was not unitary and the Board failed to justify the existence of racially identifiable schools in the system.

The School Board failed to submit a plan for the desegregation of those areas of the parish which still evidenced qualities of the former dual system. The United States submitted a plan which was adopted by the plaintiffs; however, the court rejected this plan and undertook the composition of its own plan.

The target areas of the courts plan was the metropolitan area of Alexandria and the rural southeastern area of the Parish. Under a portion of this plan, two racially identifiable schools in southeast Rapides Parish (Lincoln Williams - predominantly black, Forest



Hill - predominantly white) were closed. The students from these schools were reassigned to schools in Le-compte. Motions to stay implementation of the court's plan were denied at all levels of the Federal Appellate process, and the plan was implemented at the commencement of the 1980 - 1981 school year. In addition to the denial of the motions to stay implementation, the district court also denied a motion for intervention filed by residents of the Forest Hill community.<sup>2</sup>

The United States Court of Appeal for the Fifth Circuit affirmed the district court's ruling that the Rapides Parish School System was not unitary and further relief was required.<sup>3</sup> The court approved of the majority

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<sup>2</sup>The reasons advanced by the court for the denial of intervention as to the Forest Hill community, that "it involved issues already decided and was filed too late and at a time when the filing could have delayed the adoption of a plan for the 1980-81 school year \*\*\*"

<sup>3</sup>The Fifth Circuit affirmed the district court's judgment of August 6, 1980 in Valley and United States v. Rapides Parish School Board, 646 F.2d 925, 937 (1981).

of the district court's desegregation plan; however, the Fifth Circuit was of the opinion that the case should be remanded so that the findings which prompted the closure of the two schools in Wards 3 and 4 should be advanced so that a determination could be made as to whether the district court abused its discretion in fashioning the plan. The Fifth Circuit affirmed the court's denial of intervention to the residents of the Forest Hill community.<sup>4</sup>

On remand, the district court ordered a hearing to afford the School Board the opportunity to present additional evidence relevant to the desegregation of the school system in southeastern Rapides Parish. The Forest Hill residents motion to intervene was granted on May 21, 1981. Plaintiffs, the School Board and

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<sup>4</sup>On appeal the Fifth Circuit determined that under Rule 24 the Forest Hill residents were not entitled to intervene as a matter of right. Furthermore, the residents failed to demonstrate a judicially cognizable "interest in a desegregated school system"; therefore they were not entitled to permissive intervention under Rule 24(A)(2) 646 F. 2d 925 at 941.

Forest Hill, intervenors submitted alternative proposals for the desegregation of the forementioned schools.

The hearing was held on June 30, 1981. The district court subsequently rendered an opinion which adhered to its original decision to close Lincoln Williams and Forest Hill schools. The School Board and the Forest Hill intervenors appealed.

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed all portions of the district court's judgment. As a result thereof, the Petitioners now seek Writs of Certiorari.

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#### REASONS FOR DENYING THE PETITION

1. The Petition Should Be Denied Because The Decision of the Court of Appeals Was Based On The District Court's Finding That The School System In Southeastern Rapides Parish Was Not Unitary And The Relief Afforded By The District Court Did Not Constitute An Abuse Of Its Broad Equitable Discretion.

It is elementary that ever since this court's

decision in Brown v. Board of Education 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 2d 873. (Brown I-1954) and Brown v. Board of Education, 349 U.S. 294. (Brown II-1955), the Lower Federal Courts were delegated the authority and the power to desegregate the dual school system with "all deliberate speed." The instant litigation has extended over a period of eighteen years and the Rapides Parish School System could not be classified as unitary in 1979 when Private Plaintiffs filed their motion for supplemental relief.

The district court properly found that no justification was given by the Rapides Parish School Board for the continued existence of "racially identifiable schools." Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S. Ct. 1267, 28 L.Ed. 2d 554 (1971). Virtually fifty percent of the schools in the southeastern portion of the parish were one-race schools. The School Board having failed to totally dismantle the remaining vestiges of the former dual system, the district court properly

utilized its broad discretionary powers in implementing a workable desegregation plan. Swann, supra.

The Respondents favored pairing and/or clustering of schools in the lower courts; however, the district court's plan is a well reasoned response to the desegregation woes in Rapides Parish. This Honorable Court should also note, as the Fifth Circuit observed, that the School Board neither contributed or attempted to contribute to the formulation of a meaningful plan. This desegregation plan is not arbitrary, capricious and unreasonable and if given an opportunity there is a reasonable chance for success.

It is Respondents position that the district judge acted admirably and he utilized his equitable discretion fairly and even-handedly so that " 'the burdens of desegregation were not placed upon one racial group.' " Lee v. Macon County Board of Education, 448 F. 2d 746, 754 (5th Cir 1971).

It is petitioner's contention that there exist more feasible alternatives to the district court's plan. The Forest Hill Intervenors proposed the

busing of Black children from Lecompte to the Forest Hill facility on the same highway which they contended was dangerous for the busing of Forest Hill students to Lecompte. Furthermore, the Fifth Circuit agreed with the District Court's findings concerning the existence of the voluntary busing of Forest Hill students in grades nine through twelve as early as 1966. "High school students from the Forest Hill area have been bused to Lecompte voluntarily since the 1966-67 school year, and seventh and eighth graders must also now be bused from Forest Hill. The burden of busing the elementary school children is minimized by the previous establishment of busing for the older children. As the district court stated: 'The elementary students simply get on buses already loaded with their older brothers and sisters.'" 702 F.2d at 1221. An examination of the record of this proceeding will result in a revelation that the district court's plan is responsive to the problems and it surpasses all of the proposed alternatives. Furthermore, Petitioner's

alternative plans which proposed to exempt certain lower grades from desegregation was properly rejected by the district court and the Fifth Circuit. Flav v. Potts 464 F.2d 865 (5th Cir.), cert. denied, 409 U.S. 1007 (1972).

Respondents are also of the opinion that the Forest Hill intervenors were given due process and equal protection under the Fifth Amendment to the Constitution of the United States when they were granted procedural and substantive due process by the full fledged evidentiary hearing on May 18, 1981.

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#### CONCLUSION

The district judge was in a position to observe the defects in the previous system, and the steps undertaken by the court do not constitute an abuse of the broad equitable discretion which is afforded to erradicate the remaining vestiges of the dual system. This honorable court should decline

to exercise its discretionary jurisdiction in the instant case.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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